

No. CR-09-00930 EJD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE UNITED STATES OF AMERICA


vs.

MYRA HOLMES

SECOND SUPERSEDING INDICTMENT

Violations: Count One: 18 U.S.C. § 152(5)-Concealment of Assets/Bankruptcy Fraud;
Count Two: 18 U.S.C. § 1344-Bank Fraud;
Counts Three-Seven: 18 U.S.C. § 1014-Making a False Statement to a Bank

A true bill.



Foreperson

Filed in open court this 19TH day of DECEMBER

A.D. 2012



UNITED STATES MAGISTRATE JUDGE

Bail. \$

No Process

Filed
DEC 20 2012
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

MELINDA HAAG (CASBN 132612)
United States Attorney

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MYRA HOLMES,

Defendant.

No. CR 09-00930 EJD

VIOLATIONS: 18 U.S.C. § 152(5) –
Concealment of Assets/Bankruptcy Fraud;
18 U.S.C. § 1344 – Bank Fraud; 18 U.S.C. §
1014 – Making A False Statement to a Bank

SECOND SUPERSEDING INDICTMENT

The Grand Jury charges:

INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

1. Leonard Paige and his wife Carrie B. Paige (“the Paiges”) resided in Marina, California. Defendant Myra Holmes (“HOLMES”), the Paiges’ daughter, resided in a house located at 312 Moonraker Drive in Vallejo, California (“the Vallejo property”). HOLMES represented herself as the owner of Star Partners Security Services.

2. Prior to April 2002, Leonard Paige and HOLMES each possessed a 50% ownership in the Vallejo property as joint tenants.

1 3. In April 2002, the Paiges filed a voluntary petition for reorganization under Chapter 11
2 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of
3 California in San Jose, California ("the bankruptcy court"), Case Number 02-52371 ASW. The
4 Paiges' bankruptcy application sought to discharge over \$2,600,000 in debts. The Paiges
5 disclosed in their bankruptcy application a 50% ownership interest in the Vallejo property.

6 4. In 2004, the Paiges' Chapter 11 bankruptcy case was converted to Chapter 7 and John
7 Richardson ("Trustee Richardson") appointed as trustee of the Paiges' bankruptcy estate ("the
8 bankruptcy estate"). Trustee Richardson was appointed by the United States Bankruptcy Trustee
9 ("the United States Trustee") to recover assets from the Paiges for the benefit of creditors of the
10 bankruptcy estate, including the Department of Labor.

11 5. From late 2004 until the middle of 2005, Trustee Richardson discussed with
12 HOLMES the prospect of HOLMES' buying the bankruptcy estate's half interest in the Vallejo
13 property at a discount, as opposed to the bankruptcy estate selling the house and dividing the
14 proceeds between HOLMES and the estate. These discussions about HOLMES' purchasing the
15 bankruptcy estates's interest in the Vallejo property were unsuccessful, and HOLMES continued
16 to reside in the Vallejo property.

17 6. On July 5, 2005, Trustee Richardson, on behalf of the Paiges' creditors, filed a lawsuit
18 against HOLMES in order to facilitate the sale of the Vallejo property for the purpose of using
19 Leonard Paige's 50% interest in the house to pay the Paiges' creditors. The complaint initiating
20 the lawsuit, entitled a "Complaint for Authority to Sell Real Property Free of Interest of Co-
21 Owner under 11 U.S.C., Section 363(h)," was filed in the bankruptcy court.

22 7. On August 26, 2005, HOLMES filed an answer to Trustee Richardson's complaint in
23 the bankruptcy court. HOLMES's answer to the complaint acknowledged that the bankruptcy
24 estate owned 50% of the Vallejo property. HOLMES opposed the proposed sale of the Vallejo
25 property.

26 8. HOLMES maintained a bank account at WestAmerica Bank in California.

27 9. World Savings Bank was an FDIC-insured Bank headquartered in Oakland,
28 California.

1 10. Banks typically require applicants seeking to obtain a mortgage loan to fill out loan
2 applications known as Uniform Residential Loan Applications ("URLAs"). URLAs require
3 borrowers to accurately list the requested information, including their income and assets. Banks
4 rely on the accuracy of the information provided by borrowers in URLAs and documents and
5 other information provided in support of URLAs in evaluating whether to fund mortgages.

6 THE SCHEME TO DEFRAUD

7 11. Beginning in or about October 2005 in the Northern District of California, the
8 defendant, HOLMES, did knowingly devise, and intend to devise, a material scheme and artifice
9 to defraud and to obtain money by means of materially false and fraudulent pretenses,
10 representations, and promises, knowing that those pretenses, representations and promises were
11 false when made.

12 12. The purpose of the scheme to defraud was for HOLMES to enrich herself by having
13 her father Leonard Paige purport to convey to HOLMES his interest in the Vallejo property,
14 owned by the bankruptcy estate, to her without consideration and without notifying, or obtaining
15 the permission, of the bankruptcy court or the bankruptcy trustee.

16 13. It was further part of the scheme to defraud that after HOLMES's father purported to
17 convey his interest in the Vallejo property to her, HOLMES withdrew the equity from the Vallejo
18 property through a refinancing mortgage loan on that property that she obtained through
19 materially false statements and omissions.

20 14. In or before October 2005, HOLMES initiated a loan application process with World
21 Savings Bank in the Northern District of California for the purpose of refinancing the mortgage
22 on the Vallejo property.

23 15. On or about October 11, 2005, and again on November 14, 2005, HOLMES signed
24 and submitted to World Savings Bank separate URLAs to refinance the mortgage on the Vallejo
25 property. HOLMES made several materially false statements and omissions on those URLAs
26 and materials she submitted in support of those loan applications, including but not limited to the
27 following:

28 (a) HOLMES listed herself as owning \$600,000 in real estate when in fact as she then

1 knew she did not own that amount of real estate since the bankruptcy estate
2 lawfully held a 50% interest in the Vallejo property.

3 (b) HOLMES checked the box "no" in response to the question "Are you a party to a
4 lawsuit?", when in fact she knew that Trustee Richardson had filed a lawsuit
5 against her in order to facilitate the sale of the Vallejo property and recover the
6 bankruptcy estate's interest in the property.

7 (c) HOLMES knowingly failed to disclose to World Savings Bank: (1) that the
8 Vallejo property was the subject of bankruptcy proceedings; (2) that the
9 bankruptcy estate had a 50% interest in the Vallejo property; and (3) that the
10 bankruptcy estate had filed a complaint for authority to sell the Vallejo property
11 which was still pending before the bankruptcy court.

12 (d) HOLMES knowingly inflated her monthly income, the balance in her
13 WestAmerica account, and the value of Star Partners Security Service.

14 16. HOLMES knowingly submitted false letters of explanation in support of her URLAs.
15 On or about October 26, 2005, the defendant submitted a signed explanation letter to the bank,
16 falsely informing the bank that she needed the funds so "I can payoff Leonard Paige." On or
17 about November 9, 2005, she submitted a second signed explanation letter, falsely stating "I also
18 need the cash out so that I can pay off Leonard Paige (\$50,000)."

19 17. On November 14, 2005, HOLMES obtained her father's signature on a grant deed
20 that purported to convey his interest in the Vallejo property to HOLMES. HOLMES provided no
21 consideration for the transfer. The transfer was memorialized in a grant deed which both Paige
22 and HOLMES signed. Neither Paige nor HOLMES notified the bankruptcy court, the United
23 States Trustee, or Trustee Richardson prior to executing this grant deed.

24 18. As a result of her false and fraudulent URLAs and supporting materials, HOLMES
25 ultimately received a refinanced mortgage from World Savings Bank. The new loan, which
26 funded on November 21, 2005, increased the outstanding mortgage on the Vallejo property from
27 approximately \$180,000 to approximately \$338,000.

28 19. On or about November 21, 2005, World Savings Bank: (1) wired \$176,017.68 to

1 Wells Fargo to pay off the existing mortgage on the Vallejo property; and (2) wired \$131,410.44
2 to HOLMES's personal bank account at WestAmerica Bank. HOLMES also received additional
3 payments from Wells Fargo, in the form of checks issued by Financial Title Company, located in
4 Oakland, California, in the amount of \$15,483, issued on or about December 7, 2005, and
5 \$147.10, issued on or about February 1, 2006, for a total in payments received of approximately
6 \$147,000. As part of HOLMES's refinancing with World Savings Bank, Financial Title
7 Company also wrote several checks out of escrow funds to settle personal debts HOLMES
8 owed—including payments to several department stores. The amount of these payments made on
9 her behalf ultimately totaled approximately \$7,600. The total in payments from World Savings
10 Bank to HOLMES in the form of direct payment to her, and payment of debts paid on her behalf,
11 was approximately \$154,000.

12 20. By the end of April 2006, HOLMES had spent on personal expenses virtually all of
13 the approximately \$147,000 that she had directly received as a result of the fraudulent November
14 2005 refinancing of the Vallejo property and did not pay Leonard Paige.

15 21. HOLMES to date has not repaid the bankruptcy estate its portion of the funds she
16 took out of the Vallejo property in the November 2005 refinancing.

17 COUNT ONE: (18 U.S.C. § 152(5) – Concealment of Assets/Bankruptcy Fraud)

18 22. The factual allegations contained in paragraphs 1 through 21 are incorporated as if
19 fully set forth here.

20 23. From on or about November 14, 2005, through on or about April 30, 2006, in the
21 Northern District of California, and elsewhere, the defendant,

22 MYRA HOLMES,

23 did knowingly and fraudulently receive a material amount of property from a debtor after the
24 filing of a case under Title 11, specifically her father's interest in the house located at 312
25 Moonraker Drive in Vallejo, California, with intent to defeat the provisions of Title 11 of the
26 United States Bankruptcy Code.

27 All in violation of Title 18, United States Code, Section 152(5).

28 //

COUNT TWO: (18 U.S.C. § 1344 – Bank Fraud)

24. The factual allegations contained in paragraphs 1 through 21 are incorporated as if fully set forth here.

25. From in or about October 2005, through on or about April 30, 2006, in the Northern District of California and elsewhere, the defendant,

MYRA HOLMES,

for the purpose of executing a scheme to obtain money owned by and under the custody and control of World Savings Bank, a federally insured financial institution, by means of material false and fraudulent representations and material omissions, namely, the scheme described in paragraphs 1 through 21, did knowingly sign and submit to World Savings Bank false URLAs and supporting materials containing false information and omitting material information.

All in violation of Title 18, United States Code, Section 1344.

COUNTS THREE THROUGH SEVEN: (18 U.S.C. § 1014 – Making A False Statement to a Bank)

26. The factual allegations contained in paragraphs 1 through 21 are incorporated as if fully set forth here.

27. On or about the dates set forth below, in the Northern District of California and elsewhere, the defendant

MYRA HOLMES,

did knowingly make and cause to be made false statements in an URLA, and did submit false and fraudulent documents in support thereof, for the purpose of influencing the actions of World Savings Bank, a financial institution insured by the Federal Deposit Insurance Corporation, as follows:

Count	Dates	Document	False Statement in Support of Defendant's URLAs
3	10/11/05 & 11/14/05	URLA	Inflated monthly income of \$15,000 in Section V. Monthly Income and Combined Housing Expense Information
4	10/11/05 & 11/14/05	URLA	Inflated WestAmerica bank account balance of \$15,000 in Section VI. Assets and Liabilities

5	10/11/05 & 11/14/05	URLA	Replying "No" to Declarations Question VIIIId "Are you a party to a lawsuit?"
6	11/14/05	URLA	Inflated value of real estate owned of \$600,000 in Section VI. Assets and Liabilities
7	10/26/05 & 11/9/05	Letters	Explanation letters stating that HOLMES intended to pay off Leonard Paige

All in violation of Title 18, United States Code, Section 1014.

DATED: 12/19/12

A TRUE BILL.

FOREPERSON

MELINDA HAAG
United States Attorney

JEFFREY NEDROW
Chief, San Jose Branch Office

(Approved as to form *Joseph Fazioli*)
AUSA Fazioli

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☒ SUPERSEDING
OFFENSE CHARGED
 Count One: 18 U.S.C. § 152(5)-
 Concealment of Assets/Bankruptcy Fraud;
☐ Petty☐ Minor

Count Two: 18 U.S.C. § 1344-Bank Fraud;

☐ Misdemeanor
 Counts Three-Seven: 18 U.S.C. § 1014-Making a False
 Statement to a Bank
☒ Felony
 PENALTY: Count One: Five Years Prison, \$1,000,000 Fine,
 Three Years Supervised Release, \$100 Special Assessment

 Counts Two-Seven: Thirty Years Prison, \$1,000,000 Fine,
 Five Years Supervised Release, \$100 Special Assessment

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

DEFENDANT - U.S.

MYRA HOLMES

DISTRICT COURT NUMBER

CR-09-0930 EJD

DEFENDANT**IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

 1) ☐ If not detained give date any prior
 summons was served on above charges
2) ☐ Is a Fugitive3) ☒ Is on Bail or Release from (show District)

NORTHERN DISTRICT OF CALIFORNIA

IS IN CUSTODY4) ☐ On this charge5) ☐ On another conviction☐ Federal ☐ State6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

 Has detainer ☐ Yes
 been filed? ☐ No

 If "Yes"
 give date
 filed

**DATE OF
 ARREST**

Month/Day/Year

Or... if Arresting Agency & Warrant were not

**DATE TRANSFERRED
 TO U.S. CUSTODY**

Month/Day/Year

☐ This report amends AO 257 previously submitted**PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)

Special Agent Erin Whitchurch - FBI

☐ person is awaiting trial in another Federal or State Court,
 give name of court

☐ this person/proceeding is transferred from another district
 per (circle one) FRCP 20, 21, or 40. Show District

☐ this is a reprosecution of
 charges previously dismissed
 which were dismissed on motion
 of:
☐ U.S. ATTORNEY ☐ DEFENSESHOW
DOCKET NO.
☒ this prosecution relates to a
 pending case involving this same
 defendant
MAGISTRATE
CASE NO.
☒ prior proceedings or appearance(s)
 before U.S. Magistrate regarding this
 defendant were recorded under

09-0930 EJD

Name and Office of Person

Furnishing Information on this form Melinda Haag

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned) Joseph Fazioli

ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**☐ SUMMONS ☒ NO PROCESS* ☐ WARRANT

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

Bail Amount: _____

 * Where defendant previously apprehended on complaint, no new summons or
 warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____ Before Judge: _____

Comments: